



February 22, 2002

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## ENGROSSED SENATE BILL No. 417

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DIGEST OF SB 417 (Updated February 19, 2002 5:07 PM - DI 84)

**Citations Affected:** IC 14-8; IC 14-22; IC 14-25.5.

**Synopsis:** DNR enforcement procedures. Provides for administrative enforcement for violations under the jurisdiction of the division of water of the department of natural resources. Sets limits on the amounts of civil penalties that may be assessed for violations. Provides that certain violations are infractions. Provides that for failure to appear in response to a summons for a violation committed within the view of a conservation officer, the court shall: (1) for a resident, issue an order to suspend the defendant's driver's license and notify the bureau of motor vehicles (BMV) of the suspension; or (2) for a nonresident, notify the BMV of the defendant's failure to appear. Requires the BMV, upon receipt of notice concerning a nonresident, to notify the driver licensing authority of the defendant's state and ask that state to take appropriate action under its laws.

**Effective:** July 1, 2002.

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### Wheeler, Lewis

(HOUSE SPONSORS — LYTLE, POND)

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January 10, 2002, read first time and referred to Committee on Natural Resources.  
January 29, 2002, amended, reported favorably — Do Pass.  
February 1, 2002, read second time, ordered engrossed. Engrossed.  
February 5, 2002, read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.  
February 21, 2002, amended, reported — Do Pass.

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ES 417—LS 7288/DI 71+



February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## ENGROSSED SENATE BILL No. 417

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A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 14-8-2-77 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 77. "Division" has the  
3 following meaning:

4 (1) For purposes of IC 14-9-8, the meaning set forth in  
5 IC 14-9-8-2.

6 (2) For purposes of IC 14-20-1, the meaning set forth in  
7 IC 14-20-1-2.

8 (3) For purposes of IC 14-21-1, the meaning set forth in  
9 IC 14-21-1-6.

10 (4) For purposes of IC 14-22, the division of fish and wildlife.

11 (5) For purposes of IC 14-24, the division of entomology and  
12 plant pathology.

13 (6) **For purposes of IC 14-25.5, the division of water.**

14 (7) For purposes of IC 14-31-2, the meaning set forth in  
15 IC 14-31-2-4.

16 (7) **(8)** For purposes of IC 14-37, the division of oil and gas.

17 SECTION 2. IC 14-8-2-107, AS AMENDED BY P.L.160-1999,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2002]: Sec. 107. "Fund" has the following meaning:

- (1) For purposes of IC 14-9-5, the meaning set forth in IC 14-9-5-1.
- (2) For purposes of IC 14-9-8-21, the meaning set forth in IC 14-9-8-21.
- (3) For purposes of IC 14-9-9, the meaning set forth in IC 14-9-9-3.
- (4) For purposes of IC 14-12-1, the meaning set forth in IC 14-12-1-1.
- (5) For purposes of IC 14-12-2, the meaning set forth in IC 14-12-2-2.
- (6) For purposes of IC 14-12-3, the meaning set forth in IC 14-12-3-2.
- (7) For purposes of IC 14-13-1, the meaning set forth in IC 14-13-1-2.
- (8) For purposes of IC 14-13-2, the meaning set forth in IC 14-13-2-3.
- (9) For purposes of IC 14-19-4, the meaning set forth in IC 14-19-4-1.
- (10) For purposes of IC 14-19-5, the meaning set forth in IC 14-19-5-1.
- (11) For purposes of IC 14-20-1, the meaning set forth in IC 14-20-1-3.
- (12) For purposes of IC 14-20-11, the meaning set forth in IC 14-20-11-2.
- (13) For purposes of IC 14-22-3, the meaning set forth in IC 14-22-3-1.
- (14) For purposes of IC 14-22-4, the meaning set forth in IC 14-22-4-1.
- (15) For purposes of IC 14-22-5, the meaning set forth in IC 14-22-5-1.
- (16) For purposes of IC 14-22-8, the meaning set forth in IC 14-22-8-1.
- (17) For purposes of IC 14-22-34, the meaning set forth in IC 14-22-34-2.
- (18) For purposes of IC 14-23-3, the meaning set forth in IC 14-23-3-1.
- (19) For purposes of IC 14-23-8, the meaning set forth in IC 14-23-8-1.
- (20) For purposes of IC 14-25-2-4, the meaning set forth in IC 14-25-2-4.

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- 1 (21) For purposes of IC 14-25-10, the meaning set forth in  
 2 IC 14-25-10-1.  
 3 (22) For purposes of IC 14-25-11-19, the meaning set forth in  
 4 IC 14-25-11-19.  
 5 **(23) For purposes of IC 14-25.5, the meaning set forth in**  
 6 **IC 14-25.5-1-3.**  
 7 ~~(23)~~ (24) For purposes of IC 14-28-5, the meaning set forth in  
 8 IC 14-28-5-2.  
 9 ~~(24)~~ (25) For purposes of IC 14-31-2, the meaning set forth in  
 10 IC 14-31-2-5.  
 11 ~~(25)~~ (26) For purposes of IC 14-25-12, the meaning set forth in  
 12 IC 14-25-12-1.  
 13 ~~(26)~~ (27) For purposes of IC 14-33-14, the meaning set forth in  
 14 IC 14-33-14-3.  
 15 ~~(27)~~ (28) For purposes of IC 14-33-21, the meaning set forth in  
 16 IC 14-33-21-1.  
 17 ~~(28)~~ (29) For purposes of IC 14-34-6-15, the meaning set forth in  
 18 IC 14-34-6-15.  
 19 ~~(29)~~ (30) For purposes of IC 14-34-14, the meaning set forth in  
 20 IC 14-34-14-1.  
 21 ~~(30)~~ (31) For purposes of IC 14-37-10, the meaning set forth in  
 22 IC 14-37-10-1.  
 23 SECTION 3. IC 14-22-39-2 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) A conservation  
 25 officer may issue a summons for a violation committed within the view  
 26 of the conservation officer if the defendant promises to appear by  
 27 signing the summons.  
 28 (b) A defendant who fails to appear as commanded by the summons:  
 29 (1) is in contempt of court; and  
 30 (2) may be fined not more than twenty dollars (\$20).  
 31 (c) Upon a failure to appear, the court shall **do the following:**  
 32 **(1) Issue a warrant for the arrest of the defendant.**  
 33 **(2) If the defendant has an Indiana driver's license or permit:**  
 34 **(A) issue an order to suspend the defendant's driver's**  
 35 **license or permit until the defendant appears in court and**  
 36 **the case is disposed of; and**  
 37 **(B) forward notice of the order to the bureau of motor**  
 38 **vehicles.**  
 39 **(3) If the defendant has a driver's license or permit issued by**  
 40 **a state other than Indiana, forward notice of the defendant's**  
 41 **failure to appear to the bureau of motor vehicles. The bureau**  
 42 **of motor vehicles shall:**



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- (A) notify the driver licensing authority of the defendant's state of the defendant's failure to appear; and
- (B) request that the defendant's state take appropriate action under the laws of that state until the defendant appears in court and the case is disposed of.

SECTION 4. IC 14-25.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

**ARTICLE 25.5. ENFORCEMENT ACTIONS BY THE DIVISION OF WATER**

**Chapter 1. Applicability and Definitions**

**Sec. 1.** This article applies to actions to enforce the following articles:

- (1) IC 14-26.
- (2) IC 14-27.
- (3) IC 14-28.
- (4) IC 14-29.

**Sec. 2.** As used in this article, "division" refers to the division of water of the department.

**Sec. 3.** As used in this article, "fund" means the water environmental fund established by IC 14-25.5-3-1.

**Chapter 2. Enforcement**

**Sec. 1.** A division inspector or a person authorized by the department may at any reasonable time enter upon public or private property to determine if there is a violation of:

- (1) an article listed in IC 14-25.5-1-1; or
- (2) a rule adopted under an article listed in IC 14-25.5-1-1.

**Sec. 2.** The department may issue a written notice of violation if a person violates:

- (1) an article listed in IC 14-25.5-1-1; or
- (2) a rule adopted under an article listed in IC 14-25.5-1-1.

**Sec. 3.** A notice of violation issued under this chapter must include the following:

- (1) The nature of the violation.
- (2) The action that is appropriate to mitigate the violation.
- (3) The date by which the violation must be mitigated.
- (4) The procedure to obtain administrative review if a person is aggrieved by the issuance of the notice of violation.

**Sec. 4.** A notice of violation issued under this chapter is governed by IC 4-21.5-3-6.

**Sec. 5.** A notice of violation issued under this chapter becomes effective without a proceeding under IC 4-21.5-3 unless a person

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requests administrative review under IC 4-21.5-3-6 within thirty (30) days after receipt of the notice.

Sec. 6. A person who fails to mitigate a violation within the time set forth in a notice of violation is liable for:

- (1) a civil penalty;
  - (2) permit revocation; or
  - (3) the sanctions under both subdivisions (1) and (2);
- under IC 14-25.5-4.

### Chapter 3. Water Environmental Fund

Sec. 1. The water environmental fund is established. The department shall administer the fund.

Sec. 2. The fund consists of the following:

- (1) Accrued interest and other investment earnings of the fund.
- (2) Civil penalties collected under IC 14-25.5-4.
- (3) Gifts, grants, donations, or appropriations from any source.

Sec. 3. (a) Except as provided in subsection (d), money in the fund does not revert to the state general fund at the end of a fiscal year.

(b) The total amount in the fund may not exceed one million dollars (\$1,000,000). Any money in the fund that exceeds one million dollars (\$1,000,000) reverts to the land and water resources fund established by IC 14-25-10-2.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) If the fund is abolished, all money in the fund reverts to the state general fund.

Sec. 4. (a) Money paid into the fund may be appropriated for the following purposes:

- (1) To cover the costs of mitigating a violation of an article to which this article applies or rules adopted under an article to which this article applies.
- (2) To cover the costs of:
  - (A) mitigating environmental damage; or
  - (B) protecting the public from harm;
 caused by a violation of an article to which this article applies or a violation of rules adopted under an article to which this article applies.
- (b) The division director may make expenditures from the fund



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for purposes described in subsection (a) without the prior approval of the budget agency or the governor. An expenditure under this subsection may not exceed fifty thousand dollars (\$50,000).

**Sec. 5. (a)** An expenditure made from the fund under this chapter does not release a responsible person from liability.

**(b)** The department may seek from a responsible person reimbursement for expenses incurred under this chapter.

#### **Chapter 4. Penalties**

**Sec. 1.** The department may revoke a permit issued under an article to which this article applies if the department finds any of the following:

**(1)** The permit was issued through fraud or misrepresentation.

**(2)** The person to whom the permit was issued has violated an article to which this article applies or has violated a rule adopted under an article to which this article applies.

**(3)** The information or conditions upon which a permit was issued have substantially changed since the permit was issued.

**(4)** The person to whom the permit was issued has received a notice of violation under this article and has failed to do at least one (1) of the following:

**(A)** Mitigate the violation within the time limit set forth within the notice.

**(B)** Secure from the division in writing an extension of time within which to mitigate the violation before the expiration of the time established for mitigation.

**(C)** Request a proceeding under IC 4-21.5-3-6 within:

**(i)** thirty (30) days after receipt of the notice; or

**(ii)** the time provided by the division for mitigation; whichever is longer.

**Sec. 2. (a)** If a permit is revoked under this chapter, the department may do either or both of the following:

**(1)** Order the person to mitigate the violation.

**(2)** Mitigate the violation.

**(b)** The revocation of a permit under this chapter does not relieve the person to whom the permit relates of the responsibilities imposed by this article.

**(c)** If the department elects to mitigate under subsection (a)(2), the person to whom the permit relates remains liable for the costs of mitigating the violation.

**Sec. 3. (a)** The department may assess a civil penalty of not more than ten thousand dollars (\$10,000) for a violation of an article to

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1 which this article applies or a violation of a rule adopted under an  
2 article to which this article applies.

3 (b) Each day during which a violation continues may be  
4 considered a separate violation for purposes of assessing a civil  
5 penalty.

6 (c) The department may bring a civil action under section 5 of  
7 this chapter to recover a penalty under this section and to enjoin  
8 a person from continuing a violation.

9 Sec. 4. A civil penalty assessed under section 3 of this chapter is  
10 subject to IC 4-21.5-3-6 and becomes effective without a  
11 proceeding under IC 4-21.5-3 unless a person requests an  
12 administrative review within thirty (30) days after receipt of the  
13 notice of assessment.

14 Sec. 5. The division director may request the attorney general  
15 to institute an action in an appropriate court for the following:

16 (1) The recovery of civil penalties owed under this chapter.

17 (2) To restrain a person from commencing to violate or  
18 continuing to violate any of the following:

19 (A) An article to which this article applies or a rule  
20 adopted under an article to which this article applies.

21 (B) An order of the department.

22 Sec. 6. A person who knowingly violates this article commits a  
23 Class B infraction. Each day a violation occurs is a separate  
24 infraction.

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SENATE MOTION

Mr. President: I move that Senator Lewis be added as second author of Senate Bill 417.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 417, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 17, delete "IC 4-21.5-5" and insert "**IC 4-21.5-3**".

Page 6, line 40, delete "misdemeanor." and insert "**infraction.**".

Page 6, line 41, delete "offense." and insert "**infraction.**".

and when so amended that said bill do pass.

(Reference is to SB 417 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 6, Nays 1.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred Senate Bill 417, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 3. IC 14-22-39-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) A conservation officer may issue a summons for a violation committed within the view of the conservation officer if the defendant promises to appear by signing the summons.

(b) A defendant who fails to appear as commanded by the summons:

- (1) is in contempt of court; and
- (2) may be fined not more than twenty dollars (\$20).

(c) Upon a failure to appear, the court shall **do the following:**

(1) Issue a warrant for the arrest of the defendant.

**(2) If the defendant has an Indiana driver's license or permit:**

**(A) issue an order to suspend the defendant's driver's license or permit until the defendant appears in court and the case is disposed of; and**

**(B) forward notice of the order to the bureau of motor vehicles.**

**(3) If the defendant has a driver's license or permit issued by a state other than Indiana, forward notice of the defendant's failure to appear to the bureau of motor vehicles. The bureau of motor vehicles shall:**

**(A) notify the driver licensing authority of the defendant's state of the defendant's failure to appear; and**

**(B) request that the defendant's state take appropriate action under the laws of that state until the defendant appears in court and the case is disposed of."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 417 as printed January 30, 2002.)

LYTLE, Chair

Committee Vote: yeas 12, nays 1.

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